

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT FLEMING,

Petitioner,

-against-

THE ATTORNEY GENERAL OF THE STATE
OF NEW YORK,

Respondent.

20-CV-11130 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Petitioner, currently incarcerated at Five Points Correctional Facility in Seneca County, New York, brings this action *pro se*. Petitioner originally filed this submission, which he styles as a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(a), in his closed *habeas corpus* action assigned to Judge Louis L. Stanton, *Fleming v. Attorney General of the State of New York*, No. 20-CV-6026 (S.D.N.Y. Nov. 25, 2020). By order dated December 23, 2020, Judge Stanton, construed Petitioner's application as a petition for a writ of *habeas corpus* under § 2254, seeking release based on the risk of serious harm to Petitioner from COVID-19, and directed the Clerk of Court to open the petition as a new civil action under a new docket number. (See ECF No. 2.) Judge Stanton's order further instructed Petitioner that if he does not want to pursue relief under § 2254, he must notify the Court in writing within 30 days that he wishes to withdraw the application. (*Id.*)

On January 21, 2021, the Court received a letter from Petitioner in which he appears to seek an extension of time to notify the Court whether he wishes to withdraw his application for relief under § 2254. Petitioner's letter was also docketed in this case. (See ECF No. 3.) The Court grants Petitioner's request for an extension. Petitioner must notify the Court within 30 days from the date of this order if he wishes to withdraw his § 2254 application. If Petitioner does not

inform the Court of his intent to withdraw, the application shall remain designated as a petition under § 2254.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Petitioner and note service on the docket. The Court grants Petitioner an extension of 30 days from the date of this order to notify the Court in writing that he wishes to withdraw the application. If Petitioner does not inform the Court of his intent within 30 days, the application shall remain designated as a petition under § 2254. Petitioner is reminded that this matter cannot proceed unless he pays the \$5.00 filing fee or submits an application to proceed *in forma pauperis* (“IFP”), as set forth in the Court’s January 28, 2021 order directing payment of fee or IFP application (ECF No. 4.) No answer shall be required at this time.

SO ORDERED.

Dated: January 28, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge